

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Certiorari to Sumter County

Honorable R. Ferrell Cothran, Circuit Court Judge

---

WILLIAM RICKY WELCH,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-002375

---

PETITION FOR WRIT OF CERTIORARI

---

DAVID ALEXANDER  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR PETITIONER

**RECEIVED**

JUN 18 2018

S.C. SUPREME COURT

**INDEX**

INDEX ..... i

ISSUE PRESENTED .....1

STATEMENT .....2

ARGUMENT

The PCR court properly granted petitioner a belated appeal from  
his first PCR pursuant to Austin v. State .....3

CONCLUSION.....

**ISSUE PRESENTED**

Whether the PCR court properly granted petitioner a belated appeal from his first PCR pursuant to Austin v. State?

## STATEMENT

In a trial in Sumter County, a jury found petitioner guilty of first-degree CSC with a minor and lewd act on a minor. App. 1. App. 573, l. 21 – 574, l. 18. The Honorable R. Ferrell Cothran, Jr. presided over petitioner’s trial. App. 1. Ernest Finney represented petitioner and Suzanne Mayes represented the State. App. 1. Judge Cothran sentenced petitioner to concurrent terms of twenty years’ imprisonment for CSC and fifteen years’ imprisonment for lewd act. App. 583, ll. 5 – 16.

After an unsuccessful appeal, petitioner filed a PCR application on July 9, 2013. App. 585. On April 15, 2015, the Honorable George C. James, Jr. held a hearing. App. 599. Fulton Casey Dale Cornwell represented petitioner and Daniel F. Gourley represented the State. App. 599. On October 8, 2015, then-Judge James denied petitioner’s application. App. 628. Petitioner attempted to file a *pro se* notice of appeal, but it was dismissed. App. 655.

On May 9, 2012, petitioner filed a subsequent PCR application. App. 637. On the consent of all parties, Judge Cothran granted petitioner a belated appeal from his first PCR application and dismissed all other claims. App. 653. Petitioner now files this petition pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), asking this Court to grant certiorari and allow belated review of the 2015 Order denying him relief.

## ARGUMENT

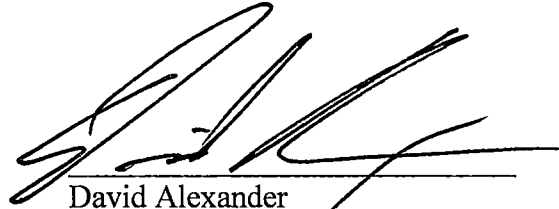
The PCR court properly granted petitioner a belated appeal from his first PCR pursuant to *Austin v. State*.

“An indigent defendant has the right to be informed of an appeal and the manner and method for taking the appeal.” *Cherry v. State*, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). In *Austin*, this Court framed the question as whether the PCR applicant “requested and was denied an opportunity to seek appellate review.” *Austin* at 454, 409 S.E.2d at 396. The appropriate scope of review of the PCR court’s holding is whether there is any evidence of probative value to uphold the PCR court’s findings. *Webb v. State*, 281 S.C. 237, 314 S.E.2d 839 (1984).

Ample evidence supports the PCR court’s conclusion that petitioner desired an appeal. As the PCR court noted in its Order, in 2016, this Court dismissed petitioner’s *pro se* attempt to appeal “without prejudice to any rights to relief under” *Austin*. App. 655. The PCR court reviewed the facts and circumstances of the case and considered the Attorney General’s consent to this relief. App. 656. Under the “any evidence” standard of review of *Webb*, this Court should conclude that the PCR court’s ruling was correct, grant certiorari, and grant petitioner a belated appeal from the 2015 Order denying relief.

**CONCLUSION**

This Court should grant certiorari and grant petitioner a belated appeal from the 2015 PCR  
Order denying relief.

A handwritten signature in black ink, appearing to read 'D. Alexander', written over a horizontal line.

David Alexander  
Appellate Defender

ATTORNEY FOR PETITIONER

This 18th day of June, 2018.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

—————  
Certiorari to Sumter County

Honorable R. Ferrell Cothran, Circuit Court Judge

—————  
WILLIAM RICKY WELCH,

PETITIONER

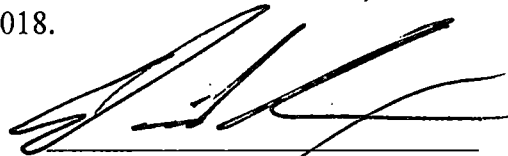
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

—————  
CERTIFICATE OF SERVICE  
—————

The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Julie Coleman, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Petition for Writ of Certiorari and a copy of the Appendix have been served on William Ricky Welch, #208451, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 18th day of June, 2018.



David Alexander  
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 18th day of June, 2018.

Marie J. J. J. (L.S)  
Notary Public for South Carolina  
My Commission Expires: July 3, 2023